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March 11, 2014
Labor and Public Employees Committee
Testimony Regarding Proposed House Bill No. 5313
"An Act Concerning Homemaker Services and Homemaker Companion Agencies"

Dear Members of the Committee:

My name is Kenneth Gurin. I am President of the Connecticut Chapter of The Home Care Association of America—(HCAOA-CT), formerly known as the National Private Duty Association. The Home Care Association of America is the leading national non-profit trade association of employer based home care agencies. Its mission is to enhance the strength and professionalism of private duty home care providers through education and best practices and is comprised of over 1,200 agencies nationwide.

Besides being President of the HCAOA for the past 4 years, I have been in the Home Care Industry for over 11 years as owner of an employment based agency registered with the Department of Consumer Protection. I, along with my HCAOA CT Chapter colleagues, are all highly committed to protect the elderly clients we proudly service and caregivers we employ.

The Home Care Association of America-Connecticut Chapter) supports the intent of House Bill 5313, An Act Concerning Homemaker Services and Homemaker Companion Agencies, and respectfully requests that before the legislature approves the bill that it amend it to address HCAOA-CT concerns expressed below. The bill is supported by many organizations and individuals who care for elderly consumers in their homes and employs caregivers across the state.

HCAOA was founded on the principle that quality private duty home care has one model of care: to employ, train, monitor and supervise caregivers; create a plan of care for the client; and work toward a safe and secure environment for the person at home. HCAOA-CT members employ several thousand caregivers providing care to thousands of elderly consumers across the state.

House Bill 5313 would designate homemaker-companion agencies, registries and homemaker-home health agencies as the employer of individuals providing homemaker and companion services to consumers for the purposes of unemployment compensation, wages and workers' compensation.

The Home Care Association of America-CT Chapter supports House Bill 5313, provided it is amended as specified below, and the Labor and Public Employees Committee should approve the amended bill because:

- **Protects workers and consumers.** Caregivers are employees, not independent contractors. Agencies that misclassify workers by not paying unemployment or workers' compensation insurance mistreat workers and put consumers at risk of liability for caregiver injuries, payment of unemployment insurance and employment-based taxes. This class of worker is not a self-directed independent contractor and therefore must be classified as an employee of an employer. Burdening seniors or consumers whose sole concern is obtaining needed care is unfair and a fiscally unsound policy for the state. It extends exemptions from liability and protection from third party lawsuits to persons receiving care services, their families and individuals acting as conservators of the person. Senior citizens do not always understand the implications of classifying workers as independent contractors.
- **Generates revenue for the state.** The bill would facilitate additional contributions to the state's unemployment compensation insurance trust fund, which has been insolvent since 2009 and is underfunded, according to the Dept. of Labor. Responsible employers have paid assessments to reimburse the federal government for principal and interest for borrowed funds to pay unemployment benefits in Connecticut. The bill would enable the state to meet its obligations to unemployed workers and not have to borrow from the federal government or require other legitimate employers to contribute more than their fair share to the fund and subsidize other employers not playing by the same rules.
- **Consistent with state administered programs.** The vast majority of home care agencies in Connecticut treat their workers as employees. Recognizing that these types of workers are in fact employees – not independent contractors – the State of Connecticut itself, under the Personal Care Assistance Medicaid Waiver Program, which allows eligible persons to receive assistance under Medicaid to pay for a Personal Care Assistant (PCA), has contracted with fiscal intermediaries to handle the employer responsibilities (unemployment compensation insurance, tax withholding, etc.) of Medicaid clients who elect to hire their own caregivers under a number of "self-directed" care options and programs. Also, DSS, under the Connecticut Home Care Program for Elders, will only contract with employer-based agencies. Thus, while an agency may operate as a different model and hold itself out to the public with independent contractors, it is barred from

doing so with DSS; in order to remain compliant, such organizations have formed employer-based models.

- **Legal precedent.** In the matter of *Paffen v. Griswold Special Care*, 9019-BR-97, the Connecticut Dept. of Labor Board of Review found that a companion employed by Griswold Special Care was not an independent contractor under the "ABC test" and therefore was entitled to unemployment compensation benefits. The case was affirmed on appeal by the Superior Court and remains good law.
- **Consistent with law and policy on worker misclassification.** The bill is consistent with the law and public policy of the state and federal governments to eradicate worker misclassification.

Proposed amendment

HCAOA-CT supports an amendment to House Bill 5313 that specifies that homemaker-companion agencies and registries:

- are the employer of an employee who performs homemaker or companion services, and no such employee can be treated as an independent contractor;
- may not advise or cause an employee to execute any document stating that the employee is (i) an independent contractor or (ii) not eligible for unemployment compensation, wage and workers' compensation; and
- cannot register as an employment agency.

Again, we strongly urge the Committee that this bill should be voted favorably and we will be happy to continue to work with DOL and this Committee to help make this bill move forward.

Thank you for the opportunity to testify today.